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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,337	12/12/2003	Joel N. Myers	110106-00103	7469

27557 7590 07/25/2006

BLANK ROME LLP
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WASHINGTON, DC 20037

EXAMINER

MCELHENY JR, DONALD E

ART UNIT	PAPER NUMBER
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2857

DATE MAILED: 07/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/733,337

Applicant(s)

MYERS ET AL.

Examiner

Donald E. McElheny, Jr.

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25-31 is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-18, 20-24 is/are rejected.
- 7) ☒ Claim(s) 7 and 19 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/12/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 03/30/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-6, 8-18, 20-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter and the claimed invention lacks patentable utility.

Please be advised that the "Interim Guidelines for Examination of Patent Applications for Subject Matter Eligibility" was signed on Oct 26, 2005 and posted on the uspto.gov website. The link is:

<http://www.uspto.gov/web/offices/pac/dapp/ogsheet.html>

Also see MPEP 2106, which covers computer implemented inventions and the manner in which they may be claimed and find statutory basis under 35 U.S.C. 101.

Note that though the claims recite computer implementation, they still fail to meet the latest Guidelines criteria for having statutory basis in any type of claimed invention. All claims fail to meet the minimal requirement of a useful, concrete and tangible result of a real physical world interactive end result supported by any algorithm steps, or structure supporting such calculated step, where the end result limitation/data supports the invention being clearly and positively used in a practical useful, concrete and tangible real world combination manner. Mere model development or calculations per se lack such tangible real world interaction of their calculated results. Mere storage of data internally to the computer is not enough as such is merely supportive of routine algorithmic calculations.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 17 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Note applicants have submitted two claims numbered 17, the first of which is incomplete, making it indefinite what was intended. A proper submission of a complete set of claims is required which eliminates the incomplete first claim 17, as the second is complete and considered on the merits while the first is not.

5. Claims 1-6, 8-18, 20-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claims state in their preambles an inventive purpose of calculating and communicating probability of precipitation forecasts. While the body of the claims state means for "communicating the values", there was only one value previously calculated, and communicating may be read as just sending the data value internally from one part of the computer to some other unspecified (and thus apparently making the claim incomplete) area such as storage within the computer system. Note such internal calculations and support thereto do not suffice for statutory basis under the updated "Guidelines". The claims are always given their broadest possible interpretation of terminology as it can be found in the art even if the written specification states specific other meanings; and the non-statutory interpretation and meanings may indeed be intended by applicants. Note, however, the written specification is not seen

to give an explicit and positive stated definition of this term as to its specific limited breadth, thus further evidence of permission to use the broadest possible meaning. No matter the disclosed definitions, during prosecution the claims should explicitly and clearly state what they intend the invention to be when necessary to define over the state of the prior art and to avoid confusion and indefiniteness.

Furthermore, as stated in the 101 rejection, note the body of these claims fail to ever accomplish an end result of any useful, concrete and tangible real world practical nature, and thus are unclear how and when such any inventive desired result and inventive purpose is ever reached and accomplished. The bodies of all claims are directed to mere data manipulation and calculations, internal storage supporting such calculations. What usefulness and utility are all these calculating steps is never completed as required by the updated "Guidelines". Throughout the claims the various calculations appear to never be further used, nor for any useful real world end result that is useful, concrete and tangible. Note that even if sensor sources and computer supported basis were explicitly recited for such calculations that the current updated computer implemented invention "Guidelines state that such data gathering and calculation supportive structure/steps fail to give statutory weight to such type abstract idea or mathematical algorithm inventions.

Therefore, all claims appear as being incomplete for omitting essential steps for supporting any statutory desired results and missing essential and necessary relationships and statutory subject matter criteria, and such omission amounting to a gap between the steps/structure that are recited. See MPEP § 2172.01.

6. Claims 7 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

These claims recite enough required tangible limitations required under the new "Guidelines" as to be held statutory subject matter.

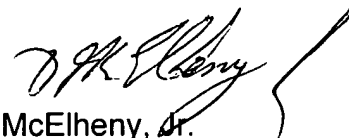
7. The IDS submission dated 3/30/04 has been considered as possible. The publications listed were not found by clerical and mailroom staff as being submitted to the Office. A check of some of the Internet web site links showed no web page available. There is also the possibility that anything the examiner might find on a current date was not what was found and the attempted citation material in the IDS submission by applicants.

8. Claims 25-31 stand allowed. The prior art is not seen to teach the particular algorithmic data processing of the probability of precipitation for the adjustment of shorter forecasting periods from the longer term data sets.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald E. McElheny, Jr. whose telephone number is 571-272-2218. The examiner can normally be reached on Monday-Thursday from 7:30 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hoff Marc, can be reached on weekdays at telephone number 571-272-2218. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Donald E. McElheny, Jr.
Primary Examiner
Art Unit 2857